

**AMERICAN BANKERS ASSOCIATION
CONSUMER BANKERS ASSOCIATION
CONSUMER MORTGAGE COALITION
CREDIT UNION NATIONAL ASSOCIATION
INDEPENDENT COMMUNITY BANKERS OF AMERICA
MORTGAGE BANKERS ASSOCIATION
NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
NATIONAL FLOOD DETERMINATION ASSOCIATION**

February 9, 2015

Docket Manager
Office of Chief Counsel
Federal Emergency Management Agency
500 C Street S.W., Room 8NE
Washington, D.C. 20472-3100
www.regulations.gov

Re: Standard Flood Hazard Determination Form
Docket ID FEMA-2014-0034
Renewal of Paperwork Reduction Act Clearance
OMB Control Number 1660-0040

Dear Docket Manager:

The undersigned trade associations appreciate this opportunity to comment on the Federal Emergency Management Agency's ("FEMA") proposed revision to a collection of information¹ that is currently approved under the Paperwork Reduction Act. This proposal would amend FEMA's Standard Flood Hazard Determination Form ("Form"). We offer comments on how FEMA could improve the utility of the Form, and on how FEMA could avoid considerable regulatory burden without affecting the Form substance.

Background

Congress enacted the National Flood Insurance Reform Act of 1994² (the "Reform Act") to revise the Flood Disaster Protection Act of 1973³ and the National Flood Insurance Act of 1968.⁴ Among its several amendments, the Reform Act required FEMA, in consultation with representatives of the mortgage and lending industry and with several

¹ The Paperwork Reduction Act generally defines a "collection of information" to include a federal agency's obtaining, requiring to obtain, soliciting, or requiring reporting of, the same information from or by ten or more persons. 44 U.S.C. § 3502(3).

² National Flood Insurance Reform Act of 1994, enacted as Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, 108 Stat 2160, 2255-2287.

³ Pub. L. No. 93-234, 87 Stat. 975.

⁴ Pub. L. No. 90-448, 82 Stat. 476.

agencies to “develop a standard form for determining, in the case of a loan secured by improved real estate or a mobile home, whether the building or mobile home is located in an area identified by the Director as an area having special flood hazards and in which flood insurance under this title is available.”⁵ The Reform Act also requires the “Federal entities for lending regulation”⁶ to promulgate regulations requiring lenders they regulate not to “make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance”⁷ and to use FEMA’s standard Form when determining whether real property offered as collateral is located in a special flood hazard area.⁸ While Congress required lenders to use the Form, Congress specified that lenders “may comply with the requirement . . . by using the form in a printed, computerized, or electronic manner.”⁹

⁵ Reform Act § 528, codified at 42 U.S.C. § 4104b.

⁶ The Reform Act, as amended, currently defines these agencies to include the Federal Reserve Board, the Federal Deposit Insurance Corporation (“FDIC”), the National Credit Union Administration (“NCUA”), the Comptroller, and the Farm Credit Administration (“FCA”). 42 U.S.C. § 4003(a)(5). (The definition originally included the Office of Thrift Supervision.)

⁷ Reform Act § 527, codified at 42 U.S.C. § 4104a. The regulations are at 12 C.F.R. §§ 22.3(a) (Comptroller); 208.25(c) (Federal Reserve Board); 339.3(a) (FDIC); 760.3(a) (NCUA); and 614.4930 (FCA).

In addition, Federal Housing Finance Agency regulations require Fannie Mae and Freddie Mac (the “GSEs”) to ensure adequate flood insurance coverage. 12 C.F.R. § 1250.2(a). The Reform Act does not include FHFA in the list of agencies whose regulations must require flood insurance coverage for new loans. The GSEs purchase, but do not originate, loans. However, the Reform Act requires the GSEs to ensure adequate flood insurance coverage with respect to loans they purchase. Reform Act § 522(a), codified at 42 U.S.C. § 4012a(b)(3).

The Federal Housing Administration also requires flood insurance coverage for loans it insures if the collateral is in a flood hazard area. 24 C.F.R. § 203.16a; *see also* FHA Mortgagee Letters [90-16](#) and [2010-43](#).

Finally, the Veterans Administration also requires flood insurance in connection with mortgage loans it insures if the collateral is in a flood hazard area, 38 C.F.R. § 36.4702, and requires use of FEMA’s Form. 38 C.F.R. § 36.4705.

The regulations of FHFA, FHA, and VA ensure appropriate flood insurance coverage with respect to covered loans even if the originating lenders are not subject to the other federal agencies’ flood insurance regulations.

⁸ Reform Act § 528, 42 U.S.C. § 4104b(c).

⁹ Reform Act § 528, 42 U.S.C. § 4104b(c).

A few months after Congress passed the Reform Act, FEMA published the Form¹⁰ as a single page Form followed by several pages of instructions. The same day, the federal lending regulators promulgated the corresponding regulations.¹¹ Today, almost twenty years later, mortgage lenders still use this Form.

The Paperwork Reduction Act requires FEMA to renew the Office of Management and Budget (“OMB”) control number for the Form because the current control number will expire on May 30, 2015.¹² This revised collection of information would not simply update the OMB control number, but would amend the Form in some ways. The [proposed Form](#) would replace a nearly identical [current Form](#). FEMA proposes to amend the Form as follows:

- Move a statement about the Paperwork Reduction Act, that use of the Form is not required absent a valid OMB control number (the “Public Protection Notice”), from the instructions into the Form itself, as the first item under the Form’s title. As a result, the Form would expand from one page to two pages, and all the boxes on the Form that lenders must populate would be rearranged. The Comments section would be moved to the second page.
- Add page numbers to the Form and its instructions, where there are currently none.
- Shrink Boxes 1 and 2 in section I, which show the lender’s name and address and the collateral description.
- Expand Box 3 in section II.B, regarding Letter of Map Change (“LOMC”), to include boxes within the box for additional data collection.

FEMA has solicited comments on its proposed revisions. After the public comment period, FEMA will submit its revised collection of information to OMB for review. The Paperwork Reduction Act requires agencies to submit proposed collections of information to OMB, with a certification that the collection of information:

- Would reduce to the extent practicable and appropriate the burden on respondents,¹³ including by simplifying compliance and reporting requirements;¹⁴ and
- Would be implemented “in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices” of respondents.¹⁵

¹⁰ 60 Fed. Reg. 35276, [35282](#) (July 6, 1995).

¹¹ 60 Fed. Reg. 35286 (July 6, 1995).

¹² OMB may not approve a collection of information for longer than three years. 44 U.S.C. § 3507(g).

¹³ 44 U.S.C. § 3506(c)(3)(C); 5 C.F.R. § 1320.9(c).

¹⁴ 5 C.F.R. § 1320.9(c)(2).

¹⁵ 44 U.S.C. § 4506(c)(3)(E) and 5 C.F.R. § 1320.9(e).

We provide comments on how FEMA can avoid unnecessary regulatory burden as the Paperwork Reduction Act intends, and we respectfully request that FEMA consider our comments in preparing its application and its certification to OMB.

Comments on Reducing Regulatory Burden

Improvements to the Form should be made to ensure the Form continues to facilitate lenders' compliance efforts and to determine the need for flood insurance. Additionally, changes should also be made to reduce the burden on lenders that must use the Form to ensure the regulatory burden is appropriate to its purpose.

We appreciate FEMA's efforts over recent years to understand the impact on affected stakeholders, including federally regulated lending institutions and their flood determination providers, when considering changes to the Form. Last year, FEMA listened to the thoughtful objections of a coalition of industry representatives with respect to a proposal to include a parcel identifier and agreed to make it optional.¹⁶ Similarly, we applaud FEMA for listening to the concerns expressed by federally regulated lenders regarding the Lender ID Number (Form's Section I Box 3) and proposing to change this field to an optional field going forward. This change will significantly alleviate the burden associated with completing, storing, and auditing the Form.

We welcome thoughtful improvements to the Form, even the addition of new fields that require additional data collection, if the changes improve lenders' ability to comply with the federal regulations or reduce the regulatory burden required to comply. We are concerned, however, when proposed changes to the Form, whether in required format or data collection, increase the burden of compliance without commensurate benefit.

The Form Should Remain a Single Page

We respectfully request that FEMA keep the Form as a one-page form plus official instructions, and that users of the Form may continue to have flexibility with respect to the format of the Form. The proposal to move the Public Protection Notice, while not substantive, would create considerable regulatory burden, as we describe below.

Lenders populate the entries in the Form, and retrieve that information, on an automated basis. For automated forms, adding a new page would require significant, costly systems reprogramming. In addition to the cost of programming systems to produce the extra page, there would be new costs to populate the extra page, and to image, store, retrieve, track, transmit, secure, back up, and audit the extra page. Viewing it on a screen would require

¹⁶ FEMA Bulletin W-14022, [Standard Flood Hazard Determination Form-Update](#) (May 6, 2014).

people to spend more time scrolling between the first and second page, and printing it would be more costly.

As FEMA identifies in the “Estimated Annualized Burden Hours and Costs” within FEMA’s notice,¹⁷ the Form may be utilized over 45 million times annually. Adding a page immediately doubles the actual cost of reproducing the Form and represents a tremendous waste of natural resources in terms of printing. For 20 years, the Form has been one page with two pages of instructions without any identified issue or resulting confusion.

The item that would move to the new page is the box for comments, Box E. Comments are an important part of a completed Form that lenders routinely use. The Comptroller of the Currency recommends that entities it regulates record in this comments box any dates of revised or updated flood determination information.¹⁸ Even lenders that the OCC does not regulate need to use the comments box. Lenders may use the comments to include property or building information related to the collateral description, or evidence of actions taken on a flood determination, such as a recheck. That is, lenders could not feasibly avoid the new regulatory burden by declining to use the comments box.

Weighed against the cost of implementing the relocated Public Protection Notice is that the revision is not required. The Paperwork Reduction Act requires both a valid OMB control number¹⁹ and notice to respondents that they are not required to use the Form unless it displays a valid OMB control number.²⁰ Significantly, the Public Protection Notice need not be in the Form itself. The Paperwork Reduction Act requires the OMB control number to be in the collection of information.²¹ OMB regulations deem the Public Protection Notice requirement satisfied if the notice is in (1) the instructions for the form; (2) near the title of the form; *or* (3) if the form is on-line, on the first screen.²² Any of these three is sufficient. For example, the familiar IRS [Form 1040](#) includes its OMB control number at the top of the form, without the expiration date or any other Paperwork Reduction Act information, and relegates the Public Protection Notice to page 97 of the [instructions](#).

¹⁷ 79 Fed. Reg. 73604, 73605 (December 11, 2014).

¹⁸ “The OCC recommends that flood determination companies and national banks indicate any dates of revision in the ‘comments’ section of the Standard Flood Hazard Determination Form, when a determination has been revised or updated.” Office of the Comptroller of the Currency, [Flood Hazard Determination Practices](#), OCC Bulletin 2008-4. This bulleting originally applied to national banks, and was expanded to apply also to federal thrifts, after Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protections Act, Pub. L. No. 111-203, 124 Stat 1376 (2010).

¹⁹ 44 U.S.C. §§ 3507(a)(3) and 3512(a)(1); 5 C.F.R. § 1320.5(b)(1).

²⁰ 44 U.S.C. § 3512(a)(2); 5 C.F.R. § 1320.5(b)(2)(i).

²¹ 44 U.S.C. § 3512(a)(1); 5 C.F.R. § 1320.5(b)(1).

²² 5 C.F.R. § 1320.5(b)(2)(ii)(A) and (B).

Placing a Public Protection Notice prominently at the top of the Form would not protect lenders from complying unnecessarily or inadvertently with a collection of information that lacks a valid OMB control number.²³ Lenders would continue to use the Form even absent OMB approval because of the several laws that require flood insurance coverage; because flood insurance coverage is a safety and soundness protection; because investors who purchase mortgage loans, and agencies that back the loans, require appropriate flood insurance coverage; and because the Form helps lenders ensure and audit their compliance with the many flood insurance requirements.

Formatting and Spacing Can Reduce Regulatory Burden

By keeping the Form to one page, FEMA could avoid adding page numbers. Adding page numbers would require lenders to make systems changes and incur regulatory burden, with no offsetting benefit. A single-page Form needs no page numbers.

Also by keeping the Public Protection Notice in the instructions, FEMA could avoid having to shrink the boxes for the lender's name and address and the collateral description. These are important pieces of information, and lenders need room to include them. A collateral description, in particular, may need space for a legal description.

FEMA does propose to shrink the box in section II.C, but this is still oversized. It could be reformatted to reduce its required space further.

The proposed LOMC box presents implementation challenges. Today, the box calls for the number of any Letter of Map Amendment or Revision. As proposed to be changed, the box is much larger. It would ask whether there is an LOMC and, if so, the date and case number. The date and case number would be populated as boxes within boxes, which technologically, are difficult to populate. As called for in the proposed instructions, if there is no LOMC, the entire entry could be left blank, which would fully convey all relevant information without the need for yes/no boxes. To avoid the boxes-within-boxes problem, and to save considerable space, we recommend a layout as follows:

²³ The Paperwork Reduction Act provides:

“Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if-

- (1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or
- (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.”

44 U.S.C. § 3512(a).

B. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DATA AFFECTING BUILDING/MOBILE				
1. NFIP Map Number or Community-Panel Number (Community name, if not the same as "A")	2. NFIP Map Panel Effective / Revised Date:	3. Letter of Map Change (LOMC) Date: Case #:	4. Flood Zone	5. No NFIP Map

We also recommend that the instructions remain as proposed with the exception of changing the field name within the instructions to “Letter of Map Change (LOMC)”.

Implementation Time is Required

Importantly, please understand that regardless of the extent of content or format changes, any changes may require at least a six-month lead time for lenders and service providers to update electronic Forms and systems.

Estimated Burden Per Respondent

Today, users of the Form utilize sophisticated software and electronic platforms to complete, transmit and store the data contained on the Form. As part of the examination of the estimated burden imposed by proposed changes to the Form, the Federal Agencies should consider the work required to make changes to the numerous systems utilized by the lending institutions and their service providers.

The estimated burden of 20 minutes per respondent, if considered an average time per determination, does not adequately account for the time needed to consult appropriate FEMA maps, identify the location of the building, consider whether a Letter of Map Amendment or Revision applies to the subject property, confirm the flood zone, confirm the community’s participation status, complete the Form, transmit the Form, receive and act on the Form, transmit the Form to the insurance tracker (if applicable) or to loan origination or servicing systems, communicate with the loan applicant regarding insurance requirements (if applicable), review the results of the Form in the event of a flood zone discrepancy, cooperate with others if a flood zone discrepancy exists, or track the Form for future map revisions.

We note that the agencies whose regulations require lenders to use the Form rely on FEMA’s Paperwork Reduction Act compliance.²⁴ Regardless of which agency estimates the burden and obtains OMB approval, the burden estimate should appropriately include the burden associated with the regulatory requirement to use the Form.

²⁴ 60 Fed. Reg. 35286, 35287 (July 6, 2015).

The estimated burden has remained at 20 minutes per determination since 1995.²⁵ While technology has reduced the amount of time to complete, transmit and store many flood determinations, certain flood determinations continue to require considerable time to complete and the additional work related to resolving flood zone discrepancies, the high volume of flood map revisions, and the proposed changes may warrant the calculation of a new estimated burden per respondent.

Conclusion

We appreciate FEMA's attention to the need to collect flood hazard determination information while minimizing regulatory burden. We urge FEMA to keep the Form to a single page and to reduce regulatory burden as we suggest, and to allow at least six months to implement the final revisions.

Sincerely,

American Bankers Association
Consumer Bankers Association
Consumer Mortgage Coalition
Credit Union National Association
Independent Community Bankers of America
Mortgage Bankers Association
National Association of Federal Credit Unions
National Flood Determination Association

²⁵ 60 Fed. Reg. 35276, 35283 (July 6, 2015).